

The United Nations and Human Rights: A Strategy for Meaningful Reform
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April 19, 2005

House Committee on International Relations
Subcommittee on Africa, Global Human Rights and International Operations
“The United Nations Commission on Human Rights: Protector or Accomplice?”

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Mr. Chairman and distinguished Members of the House International Relations Subcommittee on Africa, Global Human Rights and International Operations. Thank you for the privilege of testifying at today’s hearing on a vital international issue: our collective commitment to protect human rights.

With a profound sense of regret, I suspect that some members of this Subcommittee have come to believe that the United Nations body most responsible for spotlighting human rights abuses, the Commission on Human Rights, no longer effectively advances the cause of human rights.¹ And, indeed, it is a regrettable, yet widely recognized fact: Repressive governments seek membership on the Commission to escape scrutiny and censure.² The result is that the annual deliberations in Geneva trivialize the worst violations of human dignity and politicize what should be the collective moral judgment of civilized states.

Two years ago, for example, a newspaper headline in Khartoum, Sudan declared that the regime’s “human rights file was closed forever.” It came on the heels of a vote by the Commission on Human Rights to remove Sudan from a list of countries requiring special monitoring.³ The Commission reached the nadir of its corruption last year, however, when the Sudanese government—repeatedly accused of gross human rights abuses in

¹ The 2004 Report of the Secretary-General’s High Level Panel on Threats, Challenges and Change made this astonishing admission: “We are concerned that in recent years States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.”

² According to a 2005 Freedom House ranking, of the 53 nations that are members of the UN Commission on Human Rights, at least 14 states, or 26 percent of the total, are not free. Six states on the Commission—China, Cuba, Eritrea Saudi Arabia, Sudan, and Zimbabwe—received the worst numerical rating for freedom.

³ The Khartoum paper was cited in an April 18, 2003 editorial in the *Washington Post*. The *Post* went on to argue: “If the commission is going to continue to act against the interests of the world’s weak and persecuted, we ought not to lend it any further credibility.”

Darfur—was re-elected as a Commission member in good standing.⁴ Two weeks ago in Geneva, UN Secretary-General Kofi Annan told delegates to the Commission that their work had become dangerously compromised. “We have reached a point,” he said, “at which the commission’s declining credibility has cast a shadow on the reputation of the United Nations system as a whole and where piecemeal reforms will not be enough.”⁵

Unfortunately, the Secretary-General’s proposed reform of the Commission—that it become a permanent standing body elected by a two-thirds majority of the General Assembly—is exactly the kind of piecemeal measure he warns against. It will not prevent the nomination of oppressive states to the Commission. It will not produce UN resolutions that consistently name and shame the most egregious human-rights violators. In short, it will not help those who are caught in the grip of brutal regimes or renegade militias.

Let me briefly explain why I believe this is the case, and then try to chart a way forward.

First, there will be no agreement about criteria for membership on a new UN Human Rights Council.

Earlier this year, the European Parliament passed a resolution calling on its member states to “request” that candidates for membership on the Commission on Human Rights must have ratified “core human rights treaties” and “complied with their reporting obligations.”⁶ Under his reform plan unveiled in March 2005, the Secretary-General urges that “those elected to the Council should undertake to abide by the highest human rights standards.”⁷ These are aspirations without a concrete means of becoming a reality. UN experts I’ve spoken with don’t believe it’s possible to impose any meaningful criteria for membership (except, perhaps, a rule barring states under Security Council sanction). Even if the “regional bloc” system of voting is abolished—another big if—powerful nations would still bribe or bully reluctant governments for their support. Moreover, regional thinking has become deeply ingrained in UN member states and would not be easily overturned. Supermajority votes by the General Assembly—a 191-member body consisting of barely 88 fully free nations—could not be counted on to thwart the election of rogue regimes. Indeed, it is quite conceivable that the United States would not be elected to a new Human Rights Council.⁸

⁴ The most recent UN report on the violence in Darfur, its Commissions of Inquiry report, was released February 1, 2005. It declined to label the killings as “genocide,” but agreed that atrocities have taken place on a widespread and systematic basis.

⁵ “In Larger Freedom: Towards Development, Security and Human Rights For All,” Report of the Secretary-General, United Nations General Assembly, March 21, 2005.

⁶ European Parliament Resolution on the EU’s Priorities and Recommendations for the 61st Session of the UN Commission on Human Rights in Geneva, February 24, 2005, no.34.

⁷ “In Larger Freedom: Towards Development, Security and Human Rights For All,” Report of the Secretary-General, United Nations General Assembly, March 21, 2005.

⁸ About 115 nations make up the Non-Aligned Movement, making it nearly a two-thirds bloc within the United Nations. Among the non-aligned states, the 22-nation Arab League forms a decisive coalition within the 56-nation Islamic Conference.

Second, power politics will continue to discredit the council's human rights agenda.

By giving non-democratic states equal voting power with democracies, the UN system assures that the cause of human rights will be grossly manipulated. Third World governments, for example, have little incentive to push democratic ideals at the expense of economic interests or their regional or non-aligned identity. This helps explain why even African democracies refused in 2004 to strongly condemn ethnic cleansing in Darfur, Sudan. It is why others defer to China when Beijing maneuvers to block resolutions criticizing its own policies of political and religious repression. Even some European governments seem less interested in promoting human rights than they are in promoting the European Union to offset American power.⁹ The Secretary General's bid to let the General Assembly determine Commission membership will not change this corrupted dynamic. We already know how that body deals with human rights atrocities—it's called the Third Committee of the General Assembly, the same Committee that voted last November to take "no action" on behalf of the victims of Darfur. "It is hard to change the ethos of a limited membership body that has become crudely political," writes Ruth Wedgwood, professor of International Law and Diplomacy at Johns Hopkins University. "One may wonder whether the United Nations might gain more traction offering technical assistance to countries that want to change...rather than hosting a high-tempered shouting match each year."¹⁰

Third, no human rights body embedded in the United Nations could overcome the moral confusion crippling the human rights regimes in Geneva and New York.

One of the unfortunate results of the dominance of Non-Aligned Movement in the UN system is the elevation of social and economic rights at the expense of civil and political rights. It is hard to describe the spectacle in Geneva of advocacy groups, many functioning as fronts for despotic governments, which are allowed to consume the Commission's attention with frivolous, misleading, or false human-rights accusations. In addition, decades of duplicity, vote trading, and a lack of accountability have created a culture of indifference toward the most serious human rights abusers. In 2002, for example, Syria was elected to a non-permanent seat on the UN Security Council, despite being on the US State Department list of governments supporting terrorism. That same year, Libya was elected to chair the Commission on Human Rights by a vote of 33 to 3—a decision defended by Shashi Tharoor, UN undersecretary-general for communications and public information. "You don't advance human rights by preaching only to the converted," he said.¹¹

Though well intentioned, this mindset of accommodation undermines the very concept of transcendent moral norms enshrined in the Universal Declaration of Human Rights. It

⁹ This is the conclusion of UN specialists such as Joshua Muravchik of the American Enterprise Institute, pointing to the French proposal that the Bosnian crisis be addressed by the Western European Union (a paper organization), rather than by NATO. See Joshua Muravchik, "The UN on the Loose," *Commentary*, July-August, 2002.

¹⁰ Ruth Wedgwood, "The Evident Virtues (and Vices) of the United Nations," undated.

¹¹ Joseph Loconte, "Human Rights and Wrongs," *The Weekly Standard*, March 22, 2004.

fails to realize that human rights are not advanced by giving repressive governments voting privileges and a microphone at the United Nations. It is no wonder that neither the Commission nor the General Assembly, for example, can agree on a morally coherent definition of terrorism. Thus we've seen the Commission pass countless resolutions criticizing Israel for its treatment of Palestinians—but not a single resolution condemning Palestinian terrorist assaults against Israeli civilians.¹² “The discriminatory focus on Israel detracts from the ability of the Commission to effectively address other important matters within its mandate,” according to a recent American Bar Association report on UN reform, “and diminishes its credibility as a global human rights policymaking body.”¹³

Recommendations: A Reformation in Human Rights Protection

All of this suggests the need to completely rethink our commitment to human rights in the context of the United Nations. The Secretary-General's report insists on a new resolve to protect those whose rights are being threatened. “Human rights must be incorporated into decision-making and discussion throughout the work of the Organization,” the report says.¹⁴ At the same time, the SG declares his intention to promote the spread of democracy through a UN democracy fund. “The right to choose how they are ruled, and who rules them, must be the birthright of all people,” he says, “and its universal achievement must be a central objective of an Organization devoted to the cause of larger freedom.”¹⁵ Nowhere, however, does the SG explicitly make human rights protection the unique responsibility of democratic governments. Yet it is democracies, with all their faults, that have the best record of defending human rights. It is democracies that make the right to life and liberty, the freedom of religion, of speech, of association their bedrock guarantees.

The task of defending and promoting basic human rights must be reserved for the world's democracies—not sidelined by its despots. The failure of various UN agencies and organizations—which are always a mix of free and un-free nations—makes this conclusion unavoidable. The UN's ethos of cooperation and multiculturalism, though useful in other contexts, is completely incompatible with the goal of exposing human rights abusers and protecting innocent people.

It now seems clear that much of the task of identifying and working to prevent genocide and gross human rights abuses must occur outside of the United Nations.

First, Congress should agree with the UN Secretary-General that the UN Human Rights Commission must be abolished.

¹² About 30 percent of all Commission resolutions ever adopted condemning specific states are directed at Israel. See Ann Bayefsky, “Undiplomatic Imbalance: The Anti-Semitism of the UN is a Problem for More Than Just Israel,” National Review Online, December 13, 2004.

¹³ American Bar Association, Section of International Law's Task Force on Reform of the United Nations Commission on Human Rights, February 23, 2005.

¹⁴ “In Larger Freedom: Towards Development, Security and Human Rights For All,” Report of the Secretary-General, United Nations General Assembly, March 21, 2005, p.37.

¹⁵ Ibid., p.38.

The original Commission, led by Eleanor Roosevelt and dominated by world-renowned defenders of human rights, was able to produce the Universal Declaration of Human Rights. Not so today. The Commission's lamentable record of human-rights hypocrisy, its corrupted system of member states, its stubborn resistance to real reform—these and other factors make it essential that the Commission be abolished. As the Secretary-General has noted, its failure is tarnishing the reputation of the entire United Nations.

Second, Congress should reject any UN proposal to reconstitute a human rights body whose membership would be determined by a General Assembly vote.

The UN General Assembly has demonstrated that it cannot achieve moral clarity on the most fundamental of questions. Whether the issue is anti-Semitism, the definition of terrorism, the virtues of democracy, the reality of genocide—the General Assembly cannot reach consensus.¹⁶ When it comes to human rights, its political and ideological diversity is a source of weakness, not strength. It cannot be a major player in achieving the UN's stated goal of exposing human rights abusers and protecting innocent people.

Third, Congress should appoint an independent Human Rights Commissioner to head a new US Commission on Human Rights.

A US human rights commissioner, drawn either from government or the private sector, would have a clear record as a champion of basic political and civil liberties. He would head a permanent and independent advisory body that would meet regularly throughout the year and in special session as needed. The US Commission on Human Rights could be modeled on the US Commission on International Religious Freedom (USCIRF), an independent body that monitors religious freedom abroad and makes policy recommendations to the President, Secretary of State, and Congress. Like the USCIRF, the new US Commission on Human Rights would draw on a diverse pool of experts in human rights issues.

Fourth, the US Commission on Human Rights must focus its efforts on genocide prevention and the prevention of gross human rights abuses.

The mission of the US Human Rights Commissioner and that of the Commission must be clearly defined in order to focus attention on the most serious violations of basic political and civil liberties—such as those contained in articles 3,4,5,6, and 9 in the Universal Declaration of Human Rights (including the right to life, freedom from slavery, protection against arbitrary arrest, torture, or rape). The Commissioner should work closely with relevant non-governmental organizations, secular and religious, in identifying the most troublesome situations around the world. He should be given direct

¹⁶ The UN's 2001 conference against racism in Durban turned into such a tirade against Israel that Secretary of State Colin Powell withdrew the US delegation. In addition, although the UN Security Council condemned the 2004 terrorist assault by Chechen separatists at a school in Beslan, the United Nations has yet to define terrorism or produce a comprehensive convention condemning it.

access to the UN High Commissioner for Human Rights and the UN Special Advisor on Genocide.

Fifth, Congress should promote a “Democracy Caucus” dedicated to extending and protecting human rights and democratic freedoms.

Congress approved legislation in December 2004 to establish a Democracy Caucus within the United Nations. Its membership is to be drawn from the Community of Democracies, founded in 2000 at an international conference in Warsaw. It’s unclear, however, whether the Democracy Caucus will be limited to fully free and democratic governments and how aggressively it will challenge human rights abusers.¹⁷ The proposed US Human Rights Commissioner should take the lead in building alliances with democratic states committed to upholding the highest standards and protections for human rights. He could begin by encouraging other governments in the existing Democracy Caucus to establish human rights commissioners and advisory bodies.

Sixth, Congress should strengthen the work of the UN High Commissioner for Human Rights and the Office of the Special Adviser on the Prevention of Genocide.

The High Commissioner is the principal UN official responsible for human rights, and is accountable to the Secretary-General. Yet his office is not nearly as effective as it could be: Human rights advocates complain that the Commissioner lacks a serious field presence in many trouble spots around the world. Moreover, the Commissioner rarely appears before the Security Council to report on country-specific situations. Although the 2004 High-Level Panel Report recommends that the High Commissioner prepare an annual report on the human-rights situation worldwide, his office lacks the resources for that task. Last year the UN established the Office of the Special Adviser on the Prevention of Genocide. The Special Adviser’s task is to collect information on “massive and serious violations of human rights” and act as an early-warning mechanism to the Secretary-General. Yet his office also lacks resources, having only a half-time director and two staff.

Congress should insist that the High Commissioner concentrate exclusively on the most serious human rights abuses and have the authority to report directly to the UN Security Council. Congress should support increased funding for the UN Special Advisor on the Prevention of Genocide. His position should be full-time, and he also should have authority to report directly to the Security Council. UN human-rights offices should work closely together and meet regularly with the proposed US Human Rights Commissioner and his counterparts in other democratic nations.

¹⁷ An international coalition of human rights and pro-democracy organizations sent a letter on March 17, 2005 to “Foreign Ministers of the Community of Democracy Convening Group,” urging the UN Democracy Caucus to insist that some of the world’s worst violations be “fully aired, examined, and forthrightly censured” at the 61st session of the UN Commission on Human Rights in Geneva.

Seventh, Congress should strengthen the role of non-governmental organizations (NGOs) committed to exposing gross human rights abuses and protecting individuals at risk.

To date, the greatest pressure for effective action to halt the violence in Darfur has come from the institutions of civil society—namely, independent human-rights organizations—not from any UN officers, agencies, or commissions.¹⁸ NGOs increasingly serve as the eyes and ears of the international community when it comes to human rights abuses. Those groups devoted to monitoring abuses dispatch field officers around the globe and file detailed reports. Others, especially faith-based organizations, focus on delivering humanitarian assistance to refugees or other at-risk populations. Because of their religious commitment to helping those in greatest need, they often become aware of violent or potentially violent situations long before UN investigators.¹⁹

A UN report released in June 2004 argued that “effective engagement with civil society and other constituencies is no longer an option—it is a necessity in order for the United Nations to meet its objectives and remain relevant in the twenty-first century.”²⁰ Whether or not UN leaders heed that advice, the United States should take the lead in building strong bridges between its human rights apparatus and civil society organizations in the trenches of human-rights crises. Because of the politicized nature of UN organizations (such as the Commission on Human Rights and the Third Committee), reputable NGOs may be denied access or find their voice drowned out by the process.²¹ In contrast, the proposed US Commission on Human Rights should establish an official liaison with NGOs, based on a record of working effectively in trouble spots around the world.

Conclusion

Mr. Chairman, I appreciate the fact that some of my recommendations will appear too bold to some members of this Subcommittee and to others who wish to see the United Nations take the lead role in defending human rights. It’s true that the original Commission on Human Rights set a high standard with its Universal Declaration of Human Rights—a document that has inspired scores of treaties, conventions, and human rights organizations.

¹⁸ See, for example, a September 24, 2004 letter sent by executive directors of several NGOs to members of the UN Security Council. In it, they criticize UN Resolution 1564, adopted on September 18, 2004, because it “does not contain adequate measures to bring security to civilian populations in Darfur... The Security Council should act immediately under Chapter VII of the UN Charter to pass a resolution endorsing a significantly increased presence of AU personnel on the ground and providing them with a mandate to protect civilians.” To date, the UN Security Council has failed to act upon the letter’s recommendations.

¹⁹ Various human rights and humanitarian groups have been engaged in Sudan, including: the International Crisis Group, Doctors Without Borders, Freedom House, Human Rights Watch, and World Vision. A trade association of about 165 NGOs, InterAction.org, maintains basic standards of professionalism.

²⁰ “We the Peoples: Civil Society, the United Nations and Global Governance,” Report of the Panel of Eminent Persons on United Nations-Civil Society Relations,” June 11, 2004.

²¹ Ibid, p52. The report admits that the accreditation process for NGOs has drifted away from the concept of merit and become too politicized: “...since the United Nations is the global institution that embodies the values of free expression and assembly, it is inappropriate that...government surmises about political motives should determine who has access.”

But let's not forget why the original Commission got off to such a strong start. The single most important reason was the prestige and moral suasion of the United States. Recall the words of Charles Malik, the Lebanese delegate to the Commission, a drafter of the Universal Declaration of Human Rights. Malik was an Arab Christian and an intellectual powerhouse who went on to serve as president of the Economic and Social Council and Chairman of the Third Committee.

"The American spirit of freedom, tolerance, largeness of heart, and profound respect for individual human beings permeated and suffused our atmosphere all around," he recalled. "It was an intangible thing, but a most real thing all the same. We imbibed this spirit...above all in dealing with and talking to American men and women of every stripe and on every social level.

"I cannot imagine a document on human rights and fundamental freedoms of the importance and breadth of our declaration arising in our age without the sustaining support of this spiritual background. I cannot imagine the declaration coming to birth under the aegis of any other culture emerging dominant after the Second World War."²²

If we want to extend and defend the cause of human rights, if we hope to protect those most vulnerable to persecution and violence, we should turn to those democracies animated by that same spirit of freedom, tolerance, largeness of heart and profound respect for individual human beings—beginning with the United States.

Thank you Mr. Chairman.

²² Habib C. Malik, ed., *The Challenge of Human Rights: Charles Malik and the Universal Declaration* (Oxford: Charles Malik Foundation in association with The Centre for Lebanese Studies, 2000), p.238-39.